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IN THE

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APR 24 1946

CHARLES ELMORE DROPLAY
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Supreme Court of the United States

No. 1011.

October Term, 1945.

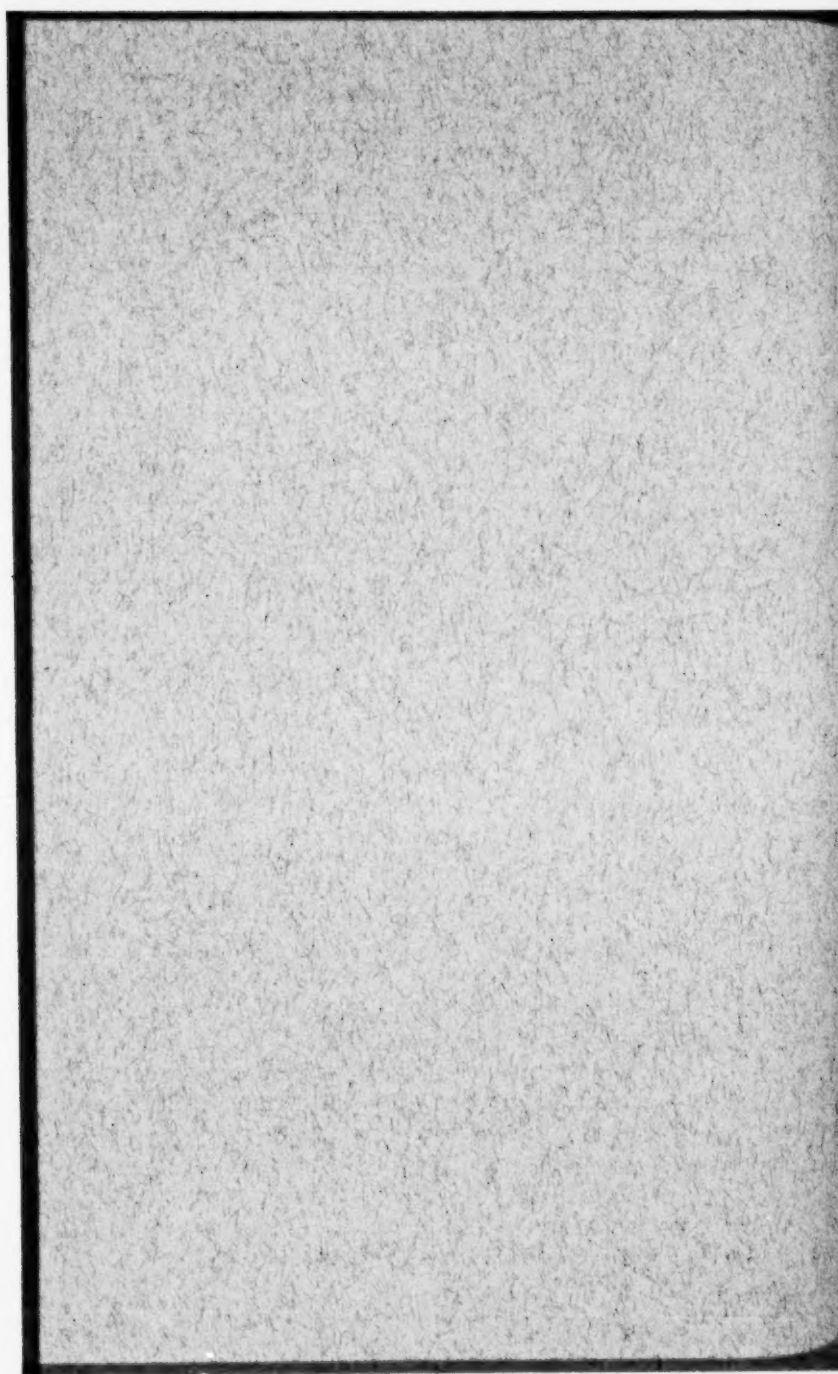
JOHN P. HUDOCK, Executor of the Estate of Michael G.
Hudock, Deceased,
Petitioner,
v.

WILLIAM C. FREEMAN, Secretary of Banking of the
Commonwealth of Pennsylvania, Receiver of Pennsylvania
Liberty Bank and Trust Company,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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JOHN P. HUDOCK, EXECUTOR OF THE ESTATE OF MICHAEL
G. HUDOCK, DECEASED,

Petitioner,

v.

WILLIAM C. FREEMAN, SECRETARY OF BANKING OF THE
COMMONWEALTH OF PENNSYLVANIA, RECEIVER OF PENN-
SYLVANIA LIBERTY BANK AND TRUST COMPANY,

Respondent.

**REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI.**

The respondent's brief in opposition to the petition for certiorari cites the Pennsylvania case of *Bell, Secretary of Banking v. Cabalik*, 346 Pa. 115 (1943), in which case a writ of certiorari was denied in *318 U. S. 785*, as an authority for the contention that the present case does not present a federal question of substance.

The *Cabalik* case is to be distinguished on its facts and law from the present case. The two constituent corporations in the *Cabalik* case were Pennsylvania state banks, incorporated under the Pennsylvania Act of May 13, 1876, P. L. 161 (7 PS 71). The respective shareholders of both constituent banks were individually responsible for corporate debts under Section 5 of the 1876 Act. The Supreme Court of Pennsylvania held in *346 Pa. 115* that the shareholders of the resultant corporation were not absolved from their respective individual liabilities in the absence of an express provision to the contrary in the Pennsylvania Act of May 3, 1909, P. L. 408 (15 PS 421), under which Act

the two constituent corporations had consolidated, or in the agreement of consolidation.

An entirely different factual and legal situation is found in the present case. Here, one constituent corporation was a state bank with its shareholders admittedly personally responsible for corporate debts, while the other constituent corporation was a Pennsylvania title insurance and trust company, the shareholders of which were by statute free from personal liability for corporate debts. The Supreme Court of Pennsylvania held in the two cases of **Freeman etc., v. Hiznay et al.**, 349 Pa. 89 (1944) and **Freeman etc. v. Hudock**, 353 Pa. 345 (1946) that the statutory immunity from personal liability for corporate debts, which the shareholders of the constituent title insurance and trust company enjoyed at the time of the consolidation, was destroyed by the voluntary consolidation with the constituent state bank, and that the existing stockholders' liability of the constituent state bank should be pro-rated between the respective shareholders of the constituent state bank and the constituent title insurance and trust company.

The primary legal issue raised by the *Cabalik* case was whether or not the shareholders of the two constituent corporations were absolved from their respective individual liabilities by the consolidation, particularly in view of the fact that neither the 1909 Consolidation Act nor the agreement of merger provided for such absolution. That issue is wholly different from the one raised by the present petition, namely, may the statutory immunity of shareholders of the constituent Pennsylvania title insurance and trust company be taken away by judicial fiat, and, in lieu thereof, may those shareholders be saddled with a proportionate part of the prior existing statutory liability of the shareholders of the other constituent corporation. In the *Cabalik* case the continuance of an existing liability did not constitute a taking of property without due process of law or a denial of the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States;

whereas in the present case the imposition of personal liability upon the theretofore immune shareholders of the constituent title insurance and trust company necessarily resulted in a taking of property without due process of law and a denial of the equal protection of the law.

The right of a State court to interpret and declare the written and unwritten laws of its State and the binding effect of such interpretation are not absolute, but are subject to the provisions of the 14th Amendment to the Constitution of the United States. Where, as here, the Supreme Court of Pennsylvania has construed the applicable Pennsylvania statutes in a manner depriving your petitioner of a valuable property right without due process of law and denying your petitioner the equal protection of the law, a federal question of substance is presented. Otherwise, the protection of the 14th Amendment is a constitutional right of little or no value and would countenance the destruction of a valuable property right at the will of the State.

Respectfully submitted,

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